

In the Matter of)	
Connect America Fund)	WC Docket No. 10-90
A National Broadband Plan for Our)	GN Docket No. 09-51
Future)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	

EXECUTIVE SUMMARY

The Commission has stated that it wants to smartly and efficiently transform the universal service program into one which promotes universal broadband availability. We applaud this goal. The joint commenters are in full agreement that universal service reform is necessary. We also support the goal to include broadband technology in the services supported by universal service. Moreover, the Commission needs to take action to control the size of the federal fund. In these comments we express some concerns and make some specific recommendations regarding the proposals outlined in the NOI/NPRM to carry out the broadband fund transition.

In summary, if broadband service is adopted as a supported service we recommend the following:

- Increase the standard for broadband speed in rural areas so that the standard is reasonably comparable with the standard in urban areas;
- Adopt separate cost models for determining wireline broadband and wireless broadband support;
- Decline to adopt the proposal to use reverse or procurement auctions;
- Preserve states' ability to continue enforcing carrier or provider service quality and consumer protection standards;

- Implement appropriate and efficient mechanisms to encourage providers who haven't built broadband infrastructure to do so within a certain timeframe; and
- Provide an incentive to states to supplement and encourage broadband deployment at affordable rates within their respective state borders.

TABLE OF CONTENTS

I. Introduction	1
II. Discussion	1
A. Disparate Rural and Urban Standards	3
B. Use of Cost Model	7
C. Unserved Areas	9
D. Carrier of Last Resort Obligations	12
E. Proposed Cuts to High-Cost Support	13
F. Affordability	14
G. State Partnership	15
III. Conclusion	16

I. INTRODUCTION

The Nebraska Public Service Commission and the North Dakota Public Service Commission (collectively referred to as "joint commenters") hereby submit the following comments in response to the Notice of Inquiry and Notice of Proposed Rulemaking (NOI/NPRM) issued by the Federal Communications Commission (Commission) on April 21, 2010. We appreciate the opportunity to provide the Commission with comments for consideration in this matter.

II. DISCUSSION

If the Commission adds broadband service to the list of universal service supported services, which we agree that it should, then the Commission's policies must be consistent with the objectives of Section 254 of the Telecommunications Act of 1996. The Commission must not only preserve but advance universal service; and the Commission must ensure that rural consumers across the nation have access to reasonably comparable broadband speeds and services to those offered in urban areas and that those services are being offered at reasonably comparable rates. To that end, we disagree with the stated broadband speed goal of 4 Mbps for rural areas. The rural broadband speed goal is far too low and is not reasonably comparable with the National Broadband Plan's broadband standard for urban areas (100 Mbps). In addition, the 4 Mbps standard does not *advance* universal service in many rural areas.

The Commission should set comparable broadband milestones in rural areas so that rural consumers do not get left behind.¹

Generally speaking, we support the use of a cost model to determine relative costs for targeting universal service support to areas with similar characteristics thereby abandoning the rural versus non-rural bias that exists in the current high cost distribution model. We posit that with an accurate cost model that includes costs to deploy a broadband capable network matched with a narrowly targeted distribution mechanism for universal service support, the Commission will not need to utilize reverse or procurement auctions to encourage the deployment of broadband to unserved or underserved areas. Moreover, use of reverse or procurement auctions will create an environment more harmful to consumers than any purported benefit.

Once the legal determination to make broadband a supported service has been made the Commission needs to implement policies which 1) provide an incentive to carriers to build out broadband networks in unserved areas; 2) provide an incentive to states to supplement the federal universal service program; 3) reform the current high-cost program; and 4) broaden the contribution base. These policies should be implemented over a reasonable period of time to mitigate the impact on customers and carriers especially those living in or serving rural markets.

Finally, the Commission should first make it a priority to size the needs of the fund and then determine how to prioritize those needs. We disagree with the

¹ What may be an average speed in today's environment will certainly not be the average ten years from now.

proposal to force rate-of-return carriers to incentive regulation and believe there are better ways to insure the use of high-cost support is consistent with universal service goals.

A. Disparate Rural and Urban Broadband Standards

The National Broadband Plan released on March 16, 2010 proposed some exciting new challenges. One among many is the goal to reach 100 million homes with 100 Mbps of broadband capacity by 2020. However, the current long-term goal (4 Mbps by 2020) for rural America is not adequate. Universal service was founded on the concept of Bell's 1908 slogan "one policy, one system, universal service."² Since then, it has embodied the goal of creating opportunities for rural and low-income consumers to have the same or similar telecommunications services available to them at comparable rates.

There is no question the federal universal service program needs reform. It also needs to evolve. The standards designed by the Commission in this proceeding must be set high enough to establish our position as a global broadband leader. The 4 Mbps standard in rural areas appears to be the point at which the Commission decided broadband service was attainable with current remittance levels and some modifications to the program. Perhaps, the Commission intends to revisit these standards over time. That notwithstanding, the Commission should not begin this process by declaring a substandard rural broadband speed within its universal service goal for rural areas.

² Michael K. Kellogg et al., Federal Telecommunications Law 11, 1992 at 12.

If broadband is a service supported by the universal service mechanism through Section 254, the Commission has the legal obligation to ensure that the services offered and the rates for the services are reasonably comparable to the services offered in urban areas.³ It is also clear that the Commission has the obligation to not only preserve universal service in rural areas, but advance universal service.⁴ In our opinion, the Commission's urban versus rural broadband standards are neither reasonably comparable nor do they advance universal service in rural areas. In addition, we believe this policy is unfair to rural and low-income consumers.

Members of Congress recently expressed their concerns about the disparity stating that "[e]stablishing such a low threshold (4 Mbps) for rural residents and businesses is not enough broadband capacity for the next several years, let alone the future demands of commerce, health care, education, energy and public safety."⁵ Twenty-two members of the U.S. Senate expressed similar concerns about the disparate urban versus rural treatment.⁶ While the Commission's National Broadband Plan goals may include broadband for everyone, the Commission's universal service goals must include reasonably comparable broadband for everyone.

³ See Section 254(b)(3). The FCC may balance the principles in Section 254(b) against one another when they conflict, but may not depart from them altogether to achieve some other goal. *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001).

⁴ See *Qwest Communications Int'l Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) (*Qwest II*).

⁵ See Letter to Chairman Genachowski dated May 28, 2010.

⁶ See Letter to Chairman Genachowski dated June 10, 2010.

A number of rural providers in our states already deploy broadband in excess of 4 Mbps or will soon be there.⁷ Small carriers rely in large part upon federal and state universal service programs, access charges, grants and low-interest loans. Some rural consumers have experienced significant economic and social benefits from having broadband access because of federal and state universal service programs. However, the carriers that serve them in many cases rely on federal and state mechanisms and will need the ongoing support continue serving high-cost customers.

A number of states supplement the federal high-cost programs through their own state programs.⁸ State universal service programs and broadband initiatives have been very successful by identifying barriers to broadband service

⁷ There are many areas in the country where consumers have dial-up Internet access as their only option. The Commission should target those areas with universal service support. There are also a number of consumers who choose not to have broadband service. The Commission's policies should not forget the subscribers who just want voice services at affordable rates.

⁸ The NPSC has filed comments in past Commission proceedings endorsing a similar approach for federal high-cost support. See NPSC Comments, *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337 (filed May 31, 2007). See also *Recommendations for a Permanent Universal Service Support Mechanism*, Tyler E. Frost and David I. Rosenbaum, *The NRRJ Journal of Applied Regulation*, volume 3 (December 2005) at 31. The NPSC's high-cost mechanism targets support to out-of-town, sparsely populated areas. Our high-cost mechanism is designed to support networks capable of providing broadband service as well as voice service to consumers. The NPSC's mechanism sizes the need for support using relative costs based on density, and allocates support to carriers using a regression model. The NPSC also uses an earnings test to determine the carriers' need for support and to limit the amount of support they receive. Following the Commission's lead, the NPSC recently opened a proceeding to determine whether to include broadband in the list of supported services or to determine whether the Commission should use state universal service support to fund broadband deployment in other ways. See NUSF-77, *In re Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the NUSF*, Order Opening Docket and Seeking Comment (January 14, 2010).

availability and working to overcome these barriers. Every state is tracking broadband deployment and working on plans to overcome barriers to broadband adoption as part of their broadband data collection, mapping and planning grant efforts. Generally, state universal service programs and other state efforts have been fairly successful in promoting access to telecommunications and advanced telecommunications services. We hope that the Commission formulates a policy whereby there is a continuing state and federal collaborative process both in terms of encouraging broadband deployment and in promoting consumer protections. States also have a strong interest in promoting consumer protections; and therefore we recommend that the Commission entrust the states with the tools necessary to preserve the protections consumers currently have with traditional telephony. State commissions are the first line of defense for consumers. However, there is no discussion in the NOI/NPRM relating to the states' role. We recommend the Commission clearly define state commissions' abilities to continue to protect their consumers and explicitly preserve that responsibility.

As detailed below, we have a number of other concerns with the details in the proposed NOI/NPRM. The proposed NOI/NPRM, along with pronouncements in the National Broadband Plan to eliminate access charges, presents an additional concern for sufficiency in rural areas. Some of the Commission's proposals threaten to chill planned investments in rural areas because funding sources are being eliminated. The fear that funding sources

relied upon to deploy broadband capable networks are being eliminated is confirmed by the early comments filed in this proceeding.

B. Use of Cost Model

The Commission seeks comment on whether to use a cost model to determine voice and broadband universal service fund support in high-cost areas. We agree that the use of a model is a competitively neutral and efficient way to quantify the minimum amount of universal service support necessary to support networks that provide broadband and voice service. We agree that the Commission should employ a cost model to quantify the amount of support necessary to achieve universal service objectives and to determine the relative cost of building broadband capable networks. To simplify the Commission's process, we would recommend using the most significant cost driver, such as density, as the basis for determining support. The Commission should use market-based information to determine costs of broadband capable networks. The Commission should not only consider capital improvements which need to be made by certain carriers but also the ongoing operational costs of current providers to maintain their broadband capable networks.

The Commission should also consider existing plant and infrastructure as well as the costs of maintaining the current broadband infrastructure. Carriers currently rely on support mechanisms to maintain existing broadband capable networks. In paragraph 33 of the NOI/NPRM, the Commission states that

[t]he National Broadband Plan model, however, does not take into account universal service support received under the current high-cost programs for the unserved areas. Rather, the National Broadband Plan model estimates only the incremental support amounts needed to deploy broadband in unserved areas and “assumes that existing networks will be available on an ongoing basis” without taking into consideration the role of existing universal service support.

We find this approach problematic. We recommend the Commission look at total costs, not simply the incremental cost of providing broadband CAF support to currently unserved areas. If the Commission does not consider the total costs of providing broadband infrastructure, it is unlikely that funding to deploy broadband will be sufficient.

We also recommend that the Commission use separate funding mechanisms for wireline and wireless carriers. It is very important for consumers to have a choice in providers. Equally important is the option to have at least one wired and one wireless provider that can offer consumers the services they need. When determining capital investments necessary or ongoing operation costs of both wireline and wireless broadband networks, the Commission must properly account for both the infrastructure and maintenance costs associated with deploying and maintaining a broadband network. We support the use of a wireless propagation model to accurately model the costs of wireless

deployment. Without the use of a wireless propagation model, it is possible that the costs to provide wireless broadband service will be underestimated.

C. Unserved Areas

The Commission should refrain from using reverse auctions or procurement bidding for unserved areas.⁹ It appears from the NOI/NPRM that the main reason for proposing a reverse auction or procurement bid process is that the Commission believes the process would most likely cut down the need for high-cost support because carriers would underbid one another for support. However, the Commission already has the ability to determine efficient costs through the use of a cost model. Cost models have improved vastly since the Commission last determined model-based USF support.¹⁰ Granular costs are more readily determinable. Through the use of a cost model, the Commission has the ability to calculate the need for support at the sub wire center level. The Commission can effectively and efficiently target support to the needed areas without resorting to a procurement bid or auction process.

Adoption of a procurement auction solution is more risky and less predictable. The use of auction mechanisms would threaten the underlying

⁹ The Commission reported that roughly seven million housing units without access to 4 Mbps terrestrial service are outside the cable footprint and are more than 11,000 feet from the nearest DSLAM location. NBP, at 24 n. 33.

¹⁰ Significant improvements have been made since the Commission adopted its cost model. GIS technology is effective and efficient means to identify areas which need USF support. Utilizing GIS data already available, such as locations of roads and urban centers, wireless tower location, topography, and population density provides a more complete picture of the marketplace. See NPSC Comments, *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337 (filed May 31, 2007).

stability of universal service in rural areas and will chill long-term investments. Lenders and investors typically require a showing that the carrier has a stable revenue source and the ability to earn a return on capital investments. It would be more difficult for providers to operate in an environment where the ability to realize a return on their investment is dependant upon the outcome of a bidding process.

Procurement auctions will most likely favor the largest carriers and disadvantage the smaller providers and new entrants. The larger carriers and largest market areas will most likely have greater ability to spread their costs between low-cost and high-cost areas.

In addition, as procurement auctions may result in support being reduced or eliminated for existing carriers we are concerned about the availability of continued and affordable voice services to consumers. Without the ongoing universal service support and access charge revenue, some carriers will not be able to continue serving low-density high-cost areas. If the winning bidder is not the ETC then the Commission will need to determine the appropriate build-out requirements and determine support to the ETC as well as the winning bidder until all customers could be served. In the case where a wireless carrier is the winning bidder, consumers may be required to cut the cord completely in order to have broadband.

We have other concerns about how the auction process would impact consumers. We believe the auction process will not naturally encourage network upgrades and service quality improvements. The Commission must also

consider what would happen if the winning bidder could not fulfill its obligations, the duration for support, how the bids would be evaluated, how carrier of last resort obligations would be handled, how auctions would be used in tribal lands, what the build-out timeframe would be, what minimum service requirements should be, what the price for service should be, and how the geographic areas would be defined. The NOI/NPRM leaves too many unanswered questions about how the Commission would implement a procurement auction for universal service support.

In the alternative to immediately implementing an auction mechanism, the Commission should begin the transition process by setting broadband milestones for telecommunications providers in areas not yet served by broadband services at reasonably comparable speeds. The Commission should determine whether those areas are in need of targeted broadband support and if so, the Commission should give the providers a set amount of time to reach the broadband milestones. As a consequence for not meeting the broadband milestones, the Commission should reduce universal service support or make the carrier ineligible for universal service support. If the provider is unwilling to deploy broadband in unserved areas, then the Commission could, in those limited instances support another provider who is willing to deploy broadband at reasonably comparable speeds.

D. Carrier of Last Resort Obligations

It is important for the Commission to preserve state Carrier of Last Resort (COLR) and Eligible Telecommunications Carrier (ETC) obligations, and service quality standards for consumers. These carriers either commit to, or are required by law to provide services to any customer in a state's service area that requests services, even if providing service to that customer would not be economically viable. These carriers are obligated to serve a designated service area using current infrastructure or by building additional infrastructure. Because COLRs serve most households and businesses in their service area the obligation to serve new customers usually applies. COLRs also may have retail duties, such as retail service quality, consumer protection, mandated economic benefits to classes of customers, supporting N11 services, and "soft dial tone", in addition to carrier-to-carrier obligations. Many states also have exit rules which apply to COLRs and ETCs for the protection of consumers.

As the FCC implements the Connect America Fund (CAF) to support broadband implementation, all necessary precautions should be taken to make the transition from voice to broadband as smooth as possible. Recipients of future CAF dollars will be broadband providers-of-last-resort. When implementing the CAF, we recommend that the FCC consider the potential impact of the broadband providers' duties and policies in relation to COLR duties and policies. These responsibilities should match as closely as possible to the duties and policies for traditional COLRs so as not to harm existing voice and broadband services.

It is not clear, at this stage of the process, how COLR obligations will be affected and which level of government will define and enforce duties, assign service areas, or make any service area adjustments. Any decisions regarding COLRs and ETCs have been handled by state commissions, and we are aware of no reason to change this policy during the transition from voice to broadband. State commissions are the first contact for consumer complaints, and should have the power to enforce laws which protect consumers from harmful behavior. State commissions also have more knowledge of local service areas and conditions that may be unique to that state, and are in a better position for detailed fact-finding after contested live hearings. States can rapidly resolve consumer issues and remove that burden from the Commission. We recommend that the Commission allow state commissions to apply their expertise in applying consumer protections to broadband service.

E. Proposed Cuts to High-Cost Support

In the transition process, it is important for the Commission to be mindful that there are still places in this country where voice services are unavailable or inadequate. In remote areas, capital investments may be hindered because of the lack of universal service or the lack of incentives.

Transitioning rate-of-return carriers to incentive based regulation may reduce the overall size of the high-cost fund, but in many areas would be harmful to carriers and consumers. Rather than potentially penalizing carriers which have made investments, the Commission should consider looking at carriers'

overall expenses and investments to make sure that universal service support is spent in an efficient manner.

We support the elimination of the identical support rule and we agree that there should be a gradual transition process to ease the impact on consumers and competitive carriers. We support the Commission's proposal to slowly ramp down competitive ETC support over a five-year period.¹¹ The transition period should be predictable and certain for competitive ETCs.

F. Affordability

One of the largest obstacles to universal broadband acceptance has been the price point for consumers, particularly in rural and low-income households. In some rural areas, the cost of broadband service can be prohibitive resulting in observed lower take rates. If the Commission adopts a broadband mechanism, there should be sufficient support to bring broadband costs to a universal price point. Assuming broadband is supported by the universal service fund, the Commission must require that broadband services are offered at just, reasonable, and affordable rates.¹²

The contribution base must be all-inclusive. Every provider using the public switched telephone network must be required to contribute in a competitively neutral manner. Parties have previously commented that the universal service support mechanism should focus on the facilities and not a

¹¹ See NOI/NPRM ¶ 60.

¹² 47 U.S. C. § 254(b)(1).

particular service. This continues to be our opinion due to the convergence of voice and data networks. All providers regardless of technology should be required to contribute and existing arbitrage opportunities should be eliminated.

G. State Partnership

Section 254(b)(5) contemplates a federal and state partnership to support universal service. All states have a stake in maximizing broadband deployment. All states should share in the costs as well. States must have sufficient mechanisms to preserve and promote universal service and must help insure affordable and reasonably comparable broadband rates and services available within their borders.¹³ The Commission must provide a stronger incentive to states to supplement the universal service mechanisms with a state allocation.

Previously, comments were filed in favor of a tiered support mechanism which gave an incentive to states to supplement the federal fund.¹⁴ We believe that an explicit incentive is needed to get some states to act. The Commission's policies must be designed to produce reasonably comparable broadband service and rates among states while not unfairly burdening consumers in some states to pay rates for comparable services that are not affordable.

¹³ See *Qwest v. FCC*, 258 F.3d 1191, 1203 (10th Cir. 2001).

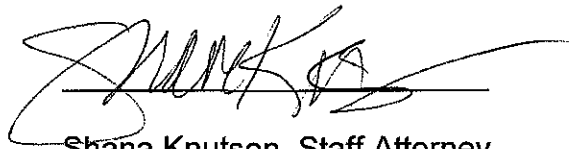
¹⁴ See NPSC Comments *In the Matter of the High-Cost Universal Service Support and Federal-State Joint Board on Universal Service* CC Docket No. 96-45 (2005).

III. CONCLUSION

We appreciate the opportunity provided by the Commission to comment on these issues and we look forward to participating in the next phase of this proceeding.

Respectfully Submitted,

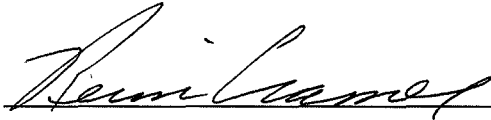
Nebraska Public Service Commission

A handwritten signature in black ink, appearing to read 'Shana Knutson', written over a horizontal line.

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Dated: July 12, 2010.

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